Subject Index

	Page
Interest of the association	2
Reason for filing a brief amicus curiae	2
Psychotherapy requires that the evidentiary privilege not to testify have no exceptions	3
Conclusion	4

Table of Authorities Cited

Cases	Page
Griswold v. Connecticut, 381 U.S. 479 (1965)	4
Codes	
California Business and Professions Code:	
Section 2903	2
California Evidence Code:	
Section 1010	2
Section 1016	4
Constitutions	
United States Constitution:	
First Amendment	4
Fourth Amendment	4
Fifth Amendment	4
Ninth Amendment	4
Fourteenth Amendment	4
Rules	
United States Supreme Court Rule 42	1

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 1395

JOSEPH E. LIFSCHUTZ, M.D., *Petitioner,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN MATEO, *Respondent.*

MOTION OF CALIFORNIA STATE PSYCHOLOGICAL ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF THE POSITION OF PETITIONER AND BRIEF AMICUS CURIAE

The California State Psychological Association (hereinafter called the "Association") respectfully moves for leave to file a brief *amicus curiae* in the instant case in support of the petitioner's request for a Writ of Certiorari to the Supreme Court of the State of California, as provided for in Rule 42 of the Rules of this Court. The consent of counsel for

the petitioner has been obtained. Counsel for the Arabians, the real parties in interest, has refused his consent.

INTEREST OF THE ASSOCIATION

The Association is a professional organization of psychologists in the State of California, and is part of the American Psychological Association. Approximately two-thirds of its 1,400 members are licensed under the laws of the State of California to engage in the practice of psychology. The Association is the largest organization representing licensed psychologists in California.

The practice of psychology by licensed psychologists under California law (Business and Professions Code, Sec. 2903) includes psychotherapy. "Psychotherapist," to whom the psychotherapist-patient evidentiary privilege applies, is defined in the California Evidence Code (Sec. 1010) as applying to (a) psychiatrists, and (b) licensed psychologists. The subject matter of the instant case, a psychotherapist's privilege to refuse to testify about his patient, deeply concerns, therefore, licensed psychologists who practice psychotherapy in California.

REASON FOR FILING A BRIEF AMICUS CURIAE

The Association wishes the Court to recognize that the issue here presented is not the narrow complaint of one solitary practitioner. Licensed psychologists,

for whom the Association speaks, stand in the same position as petitioner in respect to the psychotherapist's evidentiary privilege. They, too, face the danger of contempt proceedings for refusing to testify if they adhere to the standards of total confidentiality deemed necessary to the psychotherapeutic process.

If the interpretation of the California Evidence Code in petitioner's case is sustained, it will have a seriously deleterious effect on the practice of psychology. Unless this Court grants the petitioner's Writ and considers the merits of petitioner's position, there will be no opportunity to develop for the Court the reasons for this Association's position.

PSYCHOTHERAPY REQUIRES THAT THE EVIDENTIARY PRIVILEGE NOT TO TESTIFY HAVE NO EXCEPTIONS

In order effectively to practice psychotherapy, the psychotherapist must be able to assure his patient that, with no exceptions, the inner secret thoughts and ideas revealed by the patient to the psychotherapist will be confidential. The psychotherapist must urge his patient to reveal, with no reservations, the content of his thoughts as a necessary part of the treatment process. This is the core, the necessary essence, of the psychotherapeutic technique.

Without the assurances of confidentiality, the flow of inner thoughts and material will dry up, and the practice of psychotherapy will not be possible. The existing California Evidence Code denies the privilege of confidentiality to a psychotherapist if his patient

has put in issue his mental and emotional condition (California Evidence Code, Sec. 1016). This law, if applied, requires that the psychotherapist warn his patient about a potential exception to the confidentiality to which he would otherwise adhere. The effect of this would be to deny to the psychotherapist the access to the material necessary to treat his patient.

The California Evidence Code, Section 1016, as applied, violates the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States as interpreted by this Court in *Griswold v. Connecticut,* 381 U.S. 479 (1965). If the impact of the California statute on the practice of psychotherapy could be shown to this Court as requested by the petitioner, the serious limits placed by the California statute on the Constitutional rights of licensed psychologists would be revealed.

CONCLUSION

For the reasons set forth above, the Association prays that the Court grant to the petitioner the relief requested.

Dated, San Francisco, California;
June 3, 1969.

Respectfully submitted,
IRWIN LEFF,
Attorney for California State Psychological Association, Amicus Curiae.